

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

3 CIVIL ACTION NUMBER:  
19-md-02875

4 IN RE: VALSARTAN PRODUCTS  
5 LIABILITY LITIGATION

6 TELEPHONIC STATUS  
CONFERENCE

7 Mitchell H. Cohen Building & U.S. Courthouse  
8 4th & Cooper Streets  
Camden, New Jersey 08101  
9 January 4, 2023  
Commencing at 1:30 p.m.

10 B E F O R E:

THE HONORABLE ROBERT B. KUGLER  
UNITED STATES DISTRICT JUDGE

11  
12 A P P E A R A N C E S:

13 MAZIE SLATER KATZ & FREEMAN, LLC  
14 BY: ADAM M. SLATER, ESQUIRE  
103 Eisenhower Parkway  
15 Roseland, New Jersey 07068  
For the Plaintiffs

16 HAFFNER LAW, PC  
17 BY: VAHAN MIKAYELYAN, ESQUIRE  
445 S. Figueroa Street, Suite 2625  
18 Los Angeles, California 90071  
For the Plaintiffs

19 FLEMING, NOLEN & JEZ, LLP  
20 BY: DAVID HOBBS, ESQUIRE  
2800 Post Oak Boulevard, Suite 4000  
21 Houston, Texas 77056  
For the Plaintiffs

22  
23 Ann Marie Mitchell, Official Court Reporter  
AnnMarie\_Mitchell@njdc.uscourts.gov  
24 (856) 576-7018

25 Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

**A P P E A R A N C E S (Continued) :**

GREENBERG TRAURIG LLP  
BY: STEVEN M. HARKINS, ESQUIRE  
3333 Piedmont Road, NE, Suite 2500  
Atlanta, Georgia 30305  
For the Defendants, Teva Pharmaceutical Industries Ltd.,  
Teva Pharmaceuticals USA, Inc., Actavis LLC,  
and Actavis Pharma, Inc.

**ALSO PRESENT:**

LORETTA SMITH, ESQUIRE  
Judicial Law Clerk to The Honorable Robert B. Kugler  
  
Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held telephonically before The Honorable  
2 ROBERT B. KUGLER at 1:30 p.m.)

3 THE COURT: Good afternoon, it's Judge Kugler. Happy  
4 New Year, everyone.

5 RESPONSE: Good afternoon, Judge. Happy New Year to  
6 you, Judge!

7 THE COURT: All I see on the agenda today are these  
8 orders to show cause, and there's only apparently one of those  
9 left.

10 Who wants to speak for the defendants on these?

11 MR. HARKINS: Good afternoon, Your Honor. This is  
12 Steve Harkins with Greenberg Traurig for the Teva defendants  
13 and the joint defense group. I'll be handling this today.

14 THE COURT: Apparently only the Collins, Carrie  
15 Collins, matter remains unresolved.

16 Is that still true?

17 MR. HARKINS: That is true, Your Honor. The Collins  
18 matter is the only case where we are asking for dismissal.

19 One update to that section of the chart, the Owens  
20 case, which is listed here for continuation, has been  
21 resolved, so that can be removed.

22 So we would ask only for the Collins matter to be  
23 dismissed, and then to continue the orders to show cause in  
24 the other five cases, Bailey, Amoia, Bishop, Conley and Lewis,  
25 to the next case management conference.

1 THE COURT: Is anyone here to speak on the Carrie  
2 Collins matter?

3 MR. MIKAYELIAN: Good morning, Your Honor. Vahan  
4 Mikayelian on behalf of Carrie Collins.

5 THE COURT: Yeah. What's going on?

6 MR. MIKAYELIAN: So what we did, Your Honor, we filed  
7 a request to dismiss the action without prejudice yesterday.  
8 And this morning a text was entered on the docket that the  
9 case is terminated.

10 THE COURT: I'm sorry, what was on the docket this  
11 morning?

12 MR. MIKAYELIAN: The docket number is number 30. And  
13 we filed the request to dismiss in the individual case  
14 number --

15 THE COURT: Right.

16 MR. MIKAYELIAN: -- 16386.

17 THE COURT: Yeah.

18 MR. MIKAYELIAN: And this morning I checked the  
19 docket. There was a text entered that the case is terminated.

20 THE COURT: Well, the question is whether it's to be  
21 terminated with or without prejudice.

22 You apparently asked that it be terminated without  
23 prejudice?

24 MR. MIKAYELIAN: Yes, Your Honor.

25 THE COURT: But you don't have the consent of defense

1 counsel. Correct?

2 MR. MIKAYELIAN: No, I did not. But what we did, we  
3 filed a request to dismiss under FRCP 41(a)(2) with the  
4 Court's order.

5 THE COURT: Well, I can only do it on conditions.  
6 If the defendants won't agree to dismissal without  
7 prejudice, then how can I do that?

8 MR. HARKINS: Your Honor, this is Steve Harkins for  
9 defendants.

10 Typically we have not opposed voluntary dismissals,  
11 given that no answers have been filed, in the majority of  
12 these cases.

13 In this particular action, there was an answer filed  
14 by the ZHP defendants, which would require consent of those  
15 parties to stipulate to a voluntary dismissal.

16 Not representing the ZHP entities, I can only say  
17 that I think Your Honor is correct. Without such a  
18 stipulation, the voluntary dismissal, which would ordinarily  
19 satisfy defendants, I don't believe is operative, so we would  
20 still ask for this case to be dismissed pursuant to the order  
21 to show cause process with prejudice.

22 THE COURT: Is anybody from Skadden here who wants to  
23 speak about this?

24 Does anybody from Skadden want to agree to a  
25 dismissal without prejudice?

1           They represent ZHP.

2           (No response.)

3           THE COURT: Hearing nothing, and on the application  
4 of defense counsel, that will be dismissed with prejudice.

5           MR. MIKAYELYAN: Your Honor, regarding the dismissal  
6 of the actions, under 41(a)(2), the section specifically says  
7 that there is an opportunity to file and request dismissal  
8 without prejudice if a defendant has pleaded -- if a defendant  
9 has not pleaded a counterclaim.

10           And although there was an answer filed, there was no  
11 counterclaim pleaded. And this section gives the Court the  
12 opportunity to dismiss the case without prejudice.

13           And at the same time -- at the same time, the reason  
14 that the defendant requests dismissal with prejudice is that  
15 they think the PFS will have a core deficiency related to any  
16 area where an information regarding that cancer diagnosis is  
17 required.

18           We disagree with the defendants' interpretation.  
19 Since the case -- if this interpretation is accepted, any part  
20 of the plaintiff's fact sheet that is not applicable to any  
21 plaintiff and is therefore left blank or identified as  
22 nonapplicable may render the PFS deficient.

23           The plaintiff's fact sheet itself differentiates  
24 cancer diagnosis and noncancer injuries, which means that the  
25 requirement of cancer diagnosis is not mandatory within the

1 meaning and interpretation of the PFS.

2 My second argument will be that the initial PFS was  
3 submitted on October 12th, and we received the deficiency  
4 notice via the MDL Centrality from the defense counsel on  
5 October 12th. And it took us five days to cure the  
6 deficiencies.

7 Later on, our expectation was that further deficiency  
8 notice is going to be given via MDL Centrality, but instead, a  
9 chart was circulated. And for some reason, as a result of a  
10 mistake or inadvertence, we were not on notice regarding the  
11 deficiency.

12 And besides that, the order to show cause itself asks  
13 for a letter to be sent to the plaintiffs regarding any  
14 deficiency, but instead a chart was circulated.

15 Even after that, after receiving the Court's order to  
16 show cause on November 30, we started working, and we started  
17 curing the deficiencies. And we have cured all of the  
18 deficiencies -- most of the deficiencies, not all of them, of  
19 course.

20 We submitted the authorizations with witness  
21 signatures and medical records and bills that the plaintiff  
22 had in her possession. And also we were in the process of  
23 working and curing the rest of the deficiencies. And I don't  
24 think that the defendants' request to dismiss this case with  
25 prejudice is fair.

1           That's all from me, Your Honor.

2           THE COURT: Can you go back a minute.

3           Are you saying that Ms. Collins does or does not have  
4 a diagnosis of cancer?

5           MR. MIKAYELIAN: She does not have a cancer diagnosis  
6 at this point, but she has a diagnosis that is a precursor to  
7 diagnosis. And the dismissal of this case with prejudice will  
8 preclude her, you know, filing an -- to refile the action when  
9 she is diagnosed with the cancer in the future.

10          THE COURT: Well, why do you say she'll be diagnosed  
11 in the future if she hasn't been diagnosed now? I don't  
12 understand what you're saying.

13          MR. MIKAYELIAN: She has -- she has a diagnosis which  
14 is -- which is a precursor to cancer, which is endometrial  
15 hypertensia (ph), and -- which is a precursor to cervical  
16 cancer. There is a possibility that she might be diagnosed  
17 with cancer in the future.

18          THE COURT: And you're going to go to trial with a  
19 client who has a, quote, possibility of cancer in the future.

20          Is that what you're saying? That's what you want to  
21 do?

22          MR. MIKAYELIAN: And what we are willing to do, what  
23 we want to do, to dismiss the case without prejudice, and if  
24 there is a future cancer diagnosis, to be able to refile -- to  
25 refile the case.



1 THE COURT: I'm going to grant the motion to dismiss  
2 with prejudice. You've acknowledged that you have not  
3 complied despite three notices for the requirements.

4 So the motion of the defense will be granted. The  
5 Carrie Collins matter will be dismissed with prejudice.

6 The Mirabile, McCarty, Yount, Parker, Kwoka,  
7 K-W-O-K-A, Hernandez, Quarles, Bass, King, Thompson and Clark  
8 matters, those orders to show cause are dismissed.

9 The Owens and Bailey, Amoia, Bishop, Conley and Lewis  
10 matters, they will be relisted.

11 And that Owens matter order to show cause is  
12 dismissed.

13 So now you're seeking an order to show cause,  
14 Mr. Harkins, on five cases; is that correct? Any update on  
15 those?

16 MR. HARKINS: That's correct, Your Honor. No updates  
17 on these five. We request orders to show cause returnable at  
18 the next case management conference in each of these five  
19 matters.

20 THE COURT: All right. The Levin firm is on three of  
21 them, the Fleming firm is on two of them.

22 Anyone want to speak on behalf of those cases?

23 MR. HOBBS: Your Honor, this is David Hobbs.

24 I can speak to the Fleming cases. I don't know if  
25 you want to start with --

1 THE COURT: Sure. You've got Mary Ann Knudson and  
2 Diana Balay, B-A-L-A-Y.

3 MR. HOBBS: Yes, Your Honor. So I'll start with Mary  
4 Ann Knudson.

5 The only deficiency listed on there, it says need  
6 medical expense records for all medical expenses listed in  
7 Section IIIG of the fact sheet.

8 So we've given them all the records that we have, and  
9 we've put expenses and -- we've bundled up expenses in that  
10 section.

11 The only thing that is pending is we have medical  
12 requests -- we have billing request records out to -- to  
13 Medicare, and so we're waiting for Medicare to return back any  
14 records.

15 So I don't -- I think that we have complied with  
16 exactly what is required from Ms. Knudson. I don't -- I don't  
17 see there's a deficiency at all, so I'm just -- I'm not  
18 sure -- I actually reached out earlier today to see what the  
19 issue is, because I -- honestly, I don't understand what we're  
20 being asked to do at this point.

21 THE COURT: You're being asked to provide the  
22 records. That's all.

23 MR. HOBBS: Right.

24 THE COURT: You'll have -- you'll have another four  
25 weeks to do it.

1 MR. HOBBS: We provided all records -- we have  
2 provided the records. That's what I'm saying. I don't --

3 THE COURT: Well --

4 MR. HOBBS: -- there's other records to provide.  
5 We told --

6 THE COURT: You're saying you've provided the records  
7 that you have. That's not good enough. You've got to get all  
8 the records of your client.

9 MR. HOBBS: We have all the records. We have  
10 provided all the records from the -- that the client has. We  
11 provided all the -- we've requested -- we've had record  
12 requests pending -- I mean, this case was filed over -- in the  
13 summer, I believe. We've had record requests pending since  
14 before then, and so we've produced everything.

15 The only -- the only thing that we don't have is  
16 information from Medicare, and that's just because Medicare  
17 has not given us anything yet. But we have requests on file.

18 THE COURT: Okay. Well, when you get them, you'll  
19 send them over and that will be the end of the problem. And  
20 you still have time to do it. Okay?

21 MR. HOBBS: Yes, Your Honor.

22 THE COURT: And you can work with Mr. Harkins or  
23 whomever. I mean, they'll carry it another -- as you just  
24 saw, they're willing to carry a lot of these orders to show  
25 cause to the next listing if progress is being made. And I'm

1 sure they'll continue to do that.

2 How about the other one, the Balay, the  
3 representative of Rodriguez?

4 MR. HOBBS: For Ms. Rodriguez -- Mr. Rodriguez died  
5 in June of 2022, so this is a very recent death. The family  
6 had been working through to get -- to get basically authority  
7 to get -- request all the records, which we have. We've  
8 requested everything. I believe that we -- we did an amended  
9 fact sheet back at the -- let's see.

10 Yeah. We did an amended fact sheet at the end of  
11 November.

12 So the only thing that's listed on here, it says  
13 incomplete medical expenses, pharmacy records showing proof of  
14 sartan medications, and then it generally refers to the  
15 incompleteness of the plaintiff's fact sheet.

16 I believe that our amendment addressed anything in  
17 terms of substantial information from the plaintiff's fact  
18 sheet perspective.

19 The pharmacy records I believe are the only thing  
20 that are actually pending, because we've also included all  
21 medical expenses and totalled those up.

22 For the pharmacy records, those are with the VA. And  
23 again, it's a situation where we've requested and the VA has  
24 just not produced anything yet, so we keep following up. But,  
25 I mean, we don't have the ability to produce something that we

1 don't have.

2 And I just -- I still don't see that as a deficiency,  
3 but...

4 THE COURT: Well, the pharmacy records are pretty  
5 important in this case. But anyway, you've got more time.  
6 Work with Mr. Harkins on this. I mean, you're doing the best  
7 you can, and that's fine. You'll have more time. And be in  
8 touch with defense counsel before the next order to show cause  
9 return date. And if you're making progress and they're  
10 satisfied you're making process, I'm sure they'll agree to  
11 carry it.

12 MR. HOBBS: Yes. No, Your Honor. I understand. And  
13 I appreciate that. And I just -- again, for the record, I  
14 need to object just to preserve any error that is -- again,  
15 this is not a deficiency. We have complied with the discovery  
16 process as much as capable.

17 But I do understand from a practical standpoint that  
18 we'll have additional opportunity to hopefully supply this  
19 information.

20 THE COURT: Okay. Then we have eight -- well, I'll  
21 go back to that.

22 I guess I should put on the record, the five are  
23 Estate of James Willis; Estate of Gale, G-A-L-E, Barber; Mary  
24 Ann Knudson, K-N-U-D-S-O-N; Kenneth Bacque, B-A-C-Q-U-E, III;  
25 and Diana Balay, B-A-L-A-Y, the representative of Rodriguez.

1 They will all be listed for orders to show cause on the next  
2 return date.

3 MR. HARKINS: Apologies, Your Honor. This is Steve  
4 Harkins for the defendants.

5 Just while we have been on this call, I received an  
6 update that the fourth case on this list, Kenneth Bacque,  
7 B-A-C-Q-U-E, has been cured. And we can withdraw the request  
8 for an order to show cause with respect to that matter.

9 THE COURT: Okay. Number 4, Kenneth Bacque,  
10 B-A-C-Q-U-E, III is withdrawn. Good. Progress.

11 So that leaves eight that you want to relist again.

12 Any update on those?

13 MR. HARKINS: No updates from defendants, Your Honor.  
14 We would ask just to carry these forward to the next agenda  
15 statement.

16 THE COURT: Any objections from plaintiffs' counsel?

17 (No response.)

18 THE COURT: Thomas Donahue; Mark Czajkowski,  
19 C-Z-A-J-K-O-W-S-K-I; Beverly Thomson, T-H-O-M-S-O-N; Robert  
20 Casper; Sheri, S-H-E-R-I, Barone; Jacqueline Carter,  
21 Individually and Administrator for the Estate of James Carter;  
22 Karlene, K-A-R-L-E-N-E, Smith; and the Estate of Joseph  
23 Kreseski, K-R-E-S-E-S-K-I, they will be listed next time on a  
24 second listing.

25 All right. I think that covers the agenda items.

1           Would any -- do we have to discuss anything else  
2 anybody has?

3           How about from the plaintiffs, any other issues?

4           (No response.)

5           THE COURT: None. How about defense counsel, any  
6 other issues?

7           MR. HARKINS: I don't believe so, Your Honor.

8           THE COURT: All right. Well, we have to start moving  
9 towards the bellwether trials, and I'm looking at early summer  
10 for that. But we'll talk about that again next meeting.

11           But early summer to start the trials. Okay?

12           All right, everybody. Thank you very much. We'll  
13 talk to you again soon.

14           (Proceedings concluded at 1:47 p.m.)

15   - - -

16           I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.

18           /S/ Ann Marie Mitchell  
19           CRR, RDR, RMR, CCR-NJ  
20           Official Court Reporter

5th of January, 2023  
                  Date

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